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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE GONZALO DIAZ VILLALTA,

Defendant and Appellant.

D077363

(Super. Ct. No. 12HF0628)

APPEAL from an order of the Superior Court of Orange County, Kimberly Menninger, Judge. Affirmed.

Jose Gonzalo Diaz Villalta, in pro. per.; and Mark D. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Jose Villalta was previously charged with and convicted of multiple sex offenses involving children. We affirmed his conviction in an unpublished opinion, *People v. Villalta* (Dec. 16, 2016, D070684). We grant counsel's request to take judicial notice of the records in that case. This appeal follows the denial of Villalta's petition for

resentencing under Penal Code<sup>1</sup> section 1170.95 which addresses the definition of murder and the determination of liability of aiders and abettors convicted of first or second degree murder. None of Villalta's convictions have anything to do with homicide or malice. Thus, section 1170.95 does not apply to his case.

### PROCEDURAL BACKGROUND

Villalta was convicted of forcible lewd acts on a child (§ 288, subd. (b)(1); counts 1 and 2); aggravated sexual assault on a child (§ 269, subd. (a)(4); count 3); lewd acts on a child (§ 288, subd. (a)(1); counts 4, 5, and 6); and sexual penetration by force (§ 289, subd. (a)(1); count 7). The trial court sentenced Villalta to an indeterminate term of 90 years to life.

In February 2020, Villalta filed a pro per petition for resentencing. Among other things he alleged he had been convicted of either first- or second-degree murder. The court denied the petition finding Villalta had not been convicted of homicide and thus did not qualify for resentencing.

Villalta filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), indicating counsel has not been able to identify any arguable issues for reversal on appeal. Counsel asks the court to review the record for error as mandated

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<sup>1</sup> All further statutory references are to the Penal Code.

by *Wende*. We offered Villalta the opportunity to file his own brief on appeal. Villalta has responded with a supplemental brief. We will discuss the supplemental brief below.<sup>2</sup>

## DISCUSSION

As we have noted, appellate counsel has filed a *Wende* brief and asks the court to review the record for error. Counsel is aware that *Anders v. California* (1967) 386 U.S. 738 (*Anders*) requires counsel to assist the court by identifying possible issues counsel considered in evaluating the case. As counsel points out, section 1170.95 is plainly not applicable to this case. It addresses possible resentencing on certain homicide cases. Villalta's charges and convictions have nothing to do with any form of homicide.

In his supplemental brief, Villalta presents a variety of materials, most of which are not in the record on appeal. He has submitted the Penal Code sections dealing with murder. He complains about issues that apparently relate to the underlying trial, and not to the current resentencing petition. He also complains that his sentence in the underlying case exceeds the federal sentencing guidelines. In short, Villalta does not raise any arguable issues for reversal on appeal from the denial of his petition filed under section 1170.95.

We have reviewed the entire record as mandated by *Wende* and *Anders*. We have not discovered any arguable issues for reversal on appeal. Competent counsel has represented Villalta on this appeal.

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<sup>2</sup> The facts of the offenses are fully set forth in our prior opinion. We will not repeat them here.

DISPOSITION

The order denying Villalta's petition for resentencing under section 1170.95 is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.